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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.616 OF 2002

Ramchandra Dhondiba Kaware ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.D.G. Khamkar, Advocate appointed for Appellant
Mr.V.B.K. Deshmukh, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 16, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused has been convicted for having murdered one Keru Maruti Gadade on 4.6.2000. He has been sentenced to life imprisonment and has been directed to pay a fine of Rs.1,000/- by the II Additional Sessions Judge, Sangli.

2. Briefly stated, the prosecution case is as follows: The accused and one Shivaji Baba Lohar who was working with the deceased were on inimical terms. Shivaji's sister was married to the accused. The accused had borrowed money from Shivaji which he had not returned. The accused used to visit Shivaji in the field owned by Keru, the deceased. According to the prosecution, Keru and his family knew the accused and would often give him agricultural produce from their

lands since the accused was jobless. The case of the prosecution is that Shivaji demanded repayment of the loan he had advanced to the accused. The accused was annoyed by this and on 3.6.2000, he went to Keru's farm. Keru was asleep at a little distance from the rest of the members of his family. Shivaji was sleeping at another spot on the farm, a little further away from the family. The accused entered the farm before daybreak, at about 3 am. The dogs started barking and Maruti, the son of the deceased Maruti saw the accused beating the victim with a yoke. Maruti alerted Shivaji and they chased the accused, but he managed to escape their clutches. Maruti and Shivaji returned to the spot where the victim was lying. They found that his skull had been fractured and a part of his brain was protruding. Three fingers of his right hand were fractured and broken. His head and ears were bleeding. Maruti lodged a complaint with the police. The dead body of Keru was taken for the autopsy. The required panchanamas were drawn up and statements of witnesses were recorded. The accused was apprehended and charged for having committed an offence punishable under section 302 of the Indian Penal Code. His trial was committed to Sessions. The Sessions Court after consideration of the evidence on record as convicted the accused

3. Mr.Khamkar, learned Advocate appointed to appear

on behalf of the accused, submits that the prosecution case must fail since the Doctor who conducted the postmortem examination was not examined and the postmortem report was not proved before the trial Court. He submits that unless there is medical evidence on record to support the ocular evidence of PW2, the case of the prosecution cannot be accepted. According to the learned Counsel, it is incumbent for the prosecution to prove the injuries caused to the deceased through reliable medical evidence and not merely on the basis of eye witness accounts. He then submits that the accused had no reason or motive to kill. The prosecution had in fact established the relationship between Keru and the accused was good and that Keru had often helped the accused by giving him agricultural produce from his farm. He submits that if at all, the accused has had any animosity against somebody, it was against Shivaji, who had advanced him a loan. However, Shivaji was not examined by the prosecution. He, therefore, submits that the case of the prosecution must fail and the judgment and order impugned should be set aside. He has also submitted that in the event it is found that the accused is guilty of culpable homicide, it would not amount to murder and the offence would be punishable under section 304 Part II.

4. We have given our anxious consideration to the

submissions of the learned Advocate. However, we are afraid we are unable to accept the submissions of the learned Advocate. PW1 who is the complainant is the eye witness to the entire incident. He has deposed that he was awoken by the barking of dogs. He heard the sound of somebody being beaten. He found the accused was hitting his father on the head with the yoke. This witness has then narrated that he chased the accused but could not catch up with him. The accused escaped and he then returned to the place where his father was lying. He has described the injury sustained by his father. In the cross-examination, he has admitted that the accused had good relations with his family and that his father often extended him a helping hand. This witness has admitted there was a difference in stature between the deceased and Shivaji. He had seen the incident in the light from a lantern, although the flame was reduced. The witness has denied the suggestion that somebody else had beaten his father to death and not the accused. We have perused the complaint lodged by this witness. There are no material omissions or contradictions in the testimony of this witness. His evidence is believable and can be accepted.

5. The next witness examined on behalf of the prosecution is a panch witness. He has proved the inquest panchanama as also the spot panchanama. The

third witness for the prosecution is the panch witness who has deposed to the arrest panchanama and the seizure of clothes of the accused which were blood stained. The clothes of the deceased were also seized.

6. The prosecution has then examined the wife of the deceased as PW4. She has corroborated the testimony of her son, PW1. She has spoken about the enmity between Shivaji and the accused. This witness has testified that the lantern was always kept burning through the night. She has stated that she woke up when she heard the dogs bark and the sound of somebody beating another person. She found that the accused was raining blows with yoke on her husband. She has then spoken about the accused running away with her son, PW1 and her servant Shivaji chasing him. Her description of the injury sustained by the victim tallies with the testimony of PW1. Being an eye witness, PW4 has recounted the entire incident as it happened and her testimony corroborates the testimony of PW1. Her evidence is credible and can be accepted.

7. The next witness examined is the Investigating Officer. He had sent the blood samples of the deceased for analysis. Besides that, the clothes of the deceased and of the accused were also sent to the Chemical Analyser. The yoke which the accused had used according

to the witnesses to beat the deceased was also sent for analysis of the blood stains on it. The analyser's report indicates that all the articles had human blood stains. The blood group of the stains found on the articles was 'A'. The blood of the deceased was also found to be of 'A' group.

8. In our opinion, the prosecution has proved its case against the accused. The submission of the learned Counsel for the accused that there must be medical evidence on record before the accused can be convicted is without merit. Once there are reliable eye witness accounts on record, the medical evidence would only corroborate their testimonies. That Keru had died cannot be disputed. Nor can it be disputed that he had met with his death when he was beaten on the head with the yoke. The skull was fractured and a part of the brain had protruded from the cavity. Both PW1 and PW3 have described the injuries sustained by the deceased. Both the witnesses have spoken about the injury on the victim's hand. They have also mentioned that the deceased was bleeding from the ears as well. In our opinion, therefore, though the Doctor who performed the autopsy is not examined, the fact of Keru's death cannot be denied. Once there is credible ocular evidence on record to indicate that the accused was responsible for the death of Keru, no other evidence would be required.

The eye witness accounts are corroborated by the analysis of the blood stains found on the log as well as the clothes of the accused. In our opinion, the eye witnesses have proved the injuries sustained by the deceased and therefore, there is no need for any medical evidence to corroborate their testimonies. Although the eye witnesses are close relatives of the deceased their depositions cannot be considered to be motivated as admittedly there was no prior animosity between them and the accused.

9. As regards the motive of the accused for killing the deceased, we find that the prosecution has not established that the accused had the intention or motive to kill the deceased. The possibility of the accused wanting to kill Shivaji cannot be ruled out. It also may be possible that the accused mistakenly beat Keru instead of Shivaji. However, the accused would definitely know that the act which he committed was imminently dangerous and would in all probability cause death. The accused has assaulted the deceased on the head without any excuse. for incurring the risk of causing death of the deceased. This act of the accused constitutes the offence of culpable homicide and amounts to murder.

10. In such circumstances, we have no manner of

doubt that the accused must be convicted under section 302 of the Indian Penal Code. The submission of the learned Advocate for the accused that although he may be responsible for culpable homicide, it would not amount to murder but an offence punishable under section 304 Part II cannot be accepted.

11. In the result, the Appeal is dismissed. We confirm the conviction and the sentence imposed by the trial Court.